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PINKBERRY, INC.

9
10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 PINKBERRY, INC., a California
corporation,

13 Plaintiff,

14 vs.

15 MONKEE'S TERIYAKI, INC., a
California Corporation d/b/a MONKEE
16 EXPRESS, YONGHEE KIM, an
individual, and DOES 1 to 10, inclusive,

17 Defendants.
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No.: CV 08-05924 VBF (JCx)

**ORDER, JUDGMENT AND
PERMANENT INJUNCTION**

Date: January 5, 2009
Time: 8:30 a.m.
Place: Courtroom No. 9
Compl. Filed: September 10, 2008

Hon. Valerie Baker Fairbank

[Filed concurrently with Motion for
Default Judgment, Declaration of Noah
Campos, and Declaration of Henry C.
Wang]

Good cause appearing, the Court hereby GRANTS Plaintiff Pinkberry, Inc.'s ("Pinkberry") Motion for Default Judgment against Defendants Monkee's Teriyaki, Inc. and Yonghee Kim (collectively, "Defendants") and IT IS HEREBY ORDERED that final judgment be and hereby is entered as follows:

1. Pinkberry owns all rights in and to the United States Trademark Registrations for the following marks (collectively, "PINKBERRY Marks"):

<u>TRADEMARK</u>	<u>REG. NO.</u>	<u>ISSUE DATE</u>	<u>GOODS AND SERVICES</u>
PINKBERRY	3,302,143	October 2, 2007	Frozen yogurt; frozen yogurt based dessert, combined with fruit, nuts, cereal and shaved ice and rice cakes; and smoothies
PINKBERRY	3,460,697	July 8, 2008	Restaurant services; restaurants; take-out restaurant services, café-restaurants; fast-food restaurants
Stylized Leaf and Berry Swirl Design	3,461,027	July 8, 2008	Express restaurant services, food kiosk services, and carry-out restaurant services featuring frozen yogurt-based desserts, frozen dairy desserts, smoothies and shaved ice
PINKBERRY & Stylized Leaf and Berry Swirl Design	3,460,702	July 8, 2008	Restaurant services; restaurants; take-out restaurant services; café-restaurants; fast-food restaurants

2. The PINKBERRY Marks are coined, arbitrary and famous marks that are entitled to broad protection.

3. Defendants have operated at least one restaurant in which they sell frozen yogurt under the mark, "Coolberry," and a corresponding logo (collectively, the COOLBERRY Marks"), attached hereto as Exhibit A.

4. On or about September 10, 2008, Pinkberry commenced an action against

1 Defendant for damages and equitable relief in the United States District Court for the
 2 Central District of California, entitled Pinkberry, Inc. v. Monkee's Teriyaki, Inc. d/b/a
 3 Monkee Express and Yonghee Kim, CV 08-05924 VBF (JCx) (the "Action").

4 **A. Permanent Injunction**

5 Defendants, its subsidiaries, affiliates, agents, servants, employees,
 6 representatives, successors and assigns, and all persons, firms or corporations in active
 7 concert or participation with Defendant, shall be permanently restrained and enjoined
 8 from:

9 (1) Using any of the COOLBERRY Marks; using any name or logo similar
 10 to any of the PINKBERRY Marks in a manner that is likely to cause consumer
 11 confusion or mistake or to deceive; and using any mark that uses the word "BERRY"
 12 in a non-descriptive manner, after midnight of January 30, 2009, in connection with
 13 the sale, distribution or promotion of goods or services, including such use on or with
 14 any and all signage, uniforms, cups, napkins, decor, menus, banners, advertisements,
 15 Internet websites, coupons and any other promotional materials;

16 (2) Using any mark or logo that consists of a "swirl" or "swirl-like" design in
 17 connection with the sale, distribution or promotion of any goods or services, including
 18 on or with Defendants' signage, uniforms, cups, napkins, decor, menus, banners,
 19 advertisements, Internet websites, coupons and any other promotional materials;

20 (3) Engaging in any conduct that falsely represents, or is likely to confuse,
 21 mislead or deceive consumers or members of the public that Defendants' actions,
 22 sales, services, and/or products are sponsored by, endorsed by, licensed by, or
 23 connected or otherwise affiliated with Pinkberry or its subsidiaries; and

24 (4) Diluting, blurring or tarnishing the distinctive nature of Pinkberry's name
 25 and the PINKBERRY Marks.

26 **B. Destruction of Materials**

27 Within thirty (30) days of entry of judgment for Pinkberry, Defendants, its
 28 subsidiaries, affiliates, agents, servants, employees, representatives, successors and

1 assigns, and all persons, firms or corporations in active concert or participation with
 2 Defendants, shall destroy or deliver up for destruction to Pinkberry:

3 (1) Any and all remaining goods, apparel, merchandise, products, labels,
 4 signs, packaging wrappers, containers, advertising or promotional materials,
 5 letterhead, business cards, and any other writing materials used in its business, which
 6 display, reproduce, consists, or bear the COOLBERRY Marks; and

7 (2) Any remaining screens, designs, blueprints, drafts, patterns, plates or
 8 negatives used specifically in connection with the COOLBERRY Marks.

9 **C. Violation of Injunction**

10 Violation of this Consent Judgment and Permanent Injunction shall subject
 11 Defendants to contempt and any remedy available at law or equity, including, but not
 12 limited to, injunctive relief, monetary damages and the award of reasonable attorneys'
 13 fees and costs in enforcing this injunction.

14 **D. Jurisdiction**


15 This Court shall retain jurisdiction over any enforcement action of this
 16 injunction.

17 **E. Judgment**

18 Judgment on all claims and causes of action shall be, and is hereby, entered in
 19 favor of Plaintiff Pinkberry, Inc. accordingly and all claims and causes of action
 20 dismissed with prejudice. Plaintiff Pinkberry, Inc. is to be awarded its costs and
 21 attorneys' fees in the amount of \$ 8,119.48 or as otherwise fixed by the Court.

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 23 **IT IS SO ORDERED.**

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 25 DATED: January 26, 2009

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27 The Honorable Valerie Baker Fairbank
 28 United States District Judge